



January 23, 2009

SENATE BILL No. 41

DIGEST OF SB 41 (Updated January 21, 2009 12:42 pm - DI 106)

Citations Affected: IC 35-50; noncode.

Synopsis: Attempted sex crimes as enhancement at sentencing. Provides that an attempted sex offense may be used to establish that a person is a repeat sex offender, and makes conforming amendments.

Effective: July 1, 2009.

**Arnold, Randolph, Young R, Head,
Bray, Wyss, Zakas, Kruse**

January 7, 2009, read first time and referred to Committee on Judiciary.
January 22, 2009, amended, reported favorably — Do Pass.

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SB 41—LS 6082/DI 106+



January 23, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 41

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-50-2-14, AS AMENDED BY P.L.173-2006,
2 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 14. (a) As used in this section, "sex offense"
4 means a felony conviction:

5 (1) under IC 35-42-4-1 through IC 35-42-4-9 or under
6 IC 35-46-1-3;

7 (2) for an attempt or conspiracy to commit an offense
8 described in subdivision (1); or

9 (3) for an offense under the laws of another jurisdiction,
10 including a military court, that is substantially similar to an
11 offense described in subdivision (1).

12 (a) (b) The state may seek to have a person sentenced as a repeat
13 sexual offender for a sex offense under ~~IC 35-42-4-1 through~~
14 ~~IC 35-42-4-9 or IC 35-46-1-3~~, or for an offense committed in another
15 jurisdiction that is substantially similar to a sex offense under
16 ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~, subsection (a)(1)
17 or (a)(2) by alleging, on a page separate from the rest of the charging

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instrument, that the person has accumulated one (1) prior unrelated felony conviction for a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, or for an offense committed in another jurisdiction that is substantially similar to a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3. **subsection (a).**

~~(b)~~ **(c)** After a person has been convicted and sentenced for a felony committed **under subsection (a)(1) or (a)(2)** after ~~sentencing~~ **having been sentenced** for a prior unrelated ~~felony conviction sex offense~~ under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, or for an offense committed in another jurisdiction that is substantially similar to a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, **subsection (a)**, the person has accumulated one (1) prior unrelated felony **sex offense** conviction. However, a conviction does not count for purposes of this subsection, if:

(1) it has been set aside; or

(2) it is one for which the person has been pardoned.

~~(c)~~ **(d)** If the person was convicted of the **sex** offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

~~(d)~~ **(e)** A person is a repeat sexual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated one (1) prior unrelated felony **sex offense** conviction. ~~under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, or had accumulated one (1) prior unrelated conviction for an offense committed in another jurisdiction that is substantially similar to a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3.~~

~~(e)~~ **(f)** The court may sentence a person found to be a repeat sexual offender to an additional fixed term that is the advisory sentence for the underlying offense. However, the additional sentence may not exceed ten (10) years.

SECTION 2. [EFFECTIVE JULY 1, 2009] **IC 35-50-2-14, as amended by this act, applies only to crimes committed after June 30, 2009.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 41, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 5, delete "IC 35-42-4-11," and insert "**IC 35-42-4-9**".
and when so amended that said bill do pass.

(Reference is to SB 41 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

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